IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Notice of Motion No. 317 of 2007
in
Arbitration Petition (L) No. 26 of 2007

M/S. PRAGATI ROADLINES PVT LTD. & ORS. .. Plaintiffs

V/S
L AND T FINANCE LTD. AND ANR ... Defendants

Ms. Uma G. Wagle for petitioner / applicant.
Ms. Shakuntala Joshi for respondent no.1.

CORAM: **D.G. KARNIK J**.

DATE: February, 26, 2007

P.C.:

1. Heard counsel for the parties.
2. This motion is taken taken out by the applicant for the condonation of delay which is alleged to be of 27 days, in making an application under section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Arbitration Act').
3. Sub section 3 of section 34 of the Arbitration Act provides that an application for setting aside the award can be made within 3 months of the date on which the party making the application receives the arbitral award. Proviso to sub section 3 enables the court to condone the delay of not

exceeding 30 days in making the application.

4. In the present case the award was passed on 12th December 2005. The application under section 34 has been made on 22nd January 2007, after the period of 13 months and 10 days. Learned counsel for the applicant however submits that the award was served on the petitioner on 27th September 2006 and therefore the period of limitation would have to be counted from that day. So counted the application could have been made on or before 27th December 2006 and as such there is a delay of only 27 days which can be condoned under the proviso to sub section 3 of section 34.

5. By filing an affidavit in reply the respondent has denied the petitioners' contention that the award was served on him on 27th September 2006. In para 4 of the affidavit in reply the respondent has averred that the award was served on the petitioner on 9th January 2006. A copy of the letter on which the petitioner endorsed an acknowledgment of the receipt of the award is annexed as exhibit 'A' to the affidavit in reply. The receipt is signed by Mr. Anil Rao, who has filed the affidavit on behalf of the petitioner. Thus the award was served on the petitioner on 9th January 2006 itself. In the affidavit the respondent has further stated that the proceedings for execution of the award were taken out on 4th May 2006 and a copy of the execution proceedings along with the copy of the award was again served on the petitioner on 7th July 2006. Copy of the letter dated 27th June 2006

forwarding the execution proceedings is annexed as exhibit 'B' to the affidavit in reply. On the copy the petitioner has endorsed the receipt with the rubber stamp of the defendant dated 7th July 2006. Thus in any event the petitioner was served with the award on 7th July 2006. The petitioner therefore ought to have filed the application under section 34 within 3 months of that date, that is, on or before 10th October 2006. The present application which is filed on 22nd January 206 is thus not only beyond the three months but also beyond the period of 30 days thereafter. Under sub section 3 of section 34 the court has the power to condone the delay not exceeding 30 days. In the present case the delay is of more than 30 days and hence cannot be condoned. For these reasons the motion is dismissed.

(D.G. KARNIK J.)

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This petition under section 34 has been filed beyond the period of 3 months prescribed under sub section 3 of section 3 of the Arbitration Act. The motion for condonation of delay has been dismissed by me today. Hence the petition also stands dismissed.

(D.G. KARNIK J.)